

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	CC Docket No. 80-286
Jurisdictional Separations and Referral to)	
The Federal-State Joint Board)	

COMMENTS OF THE NEW JERSEY DIVISION OF RATE COUNSEL

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On the Comments:

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The Federal Communications Commission (“FCC” or “Commission”) seeks comment concerning its proposed extension of the current “separations” freeze until June 30, 2010.¹ “Jurisdictional separations” is the process by which incumbent local exchange carriers apportion regulated costs between the intrastate and interstate jurisdictions. One of the primary purposes of separations is to prevent carriers from recovering the same costs in both the interstate and intrastate jurisdictions. The New Jersey Division of Rate Counsel (“Rate Counsel”) welcomes the opportunity to submit these comments in response to the FCC’s Notice of Proposed Rulemaking.²

Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. Rate Counsel participates actively in relevant Federal and state administrative and judicial proceedings. The above-captioned proceeding is germane to Rate Counsel’s continued participation and interest in implementation of the

¹ / “Comment Cycle Established for Notice of Proposed Rulemaking Regarding Separations Freeze Extension,” CC Docket No. 80-286, released April 3, 2009, DA 09-767.

² / *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, FCC 09-24, Notice of Proposed Rulemaking, released March 27, 2009 (“NPRM”).

Telecommunications Act of 1996.³ The New Jersey Legislature has declared that it is the policy of the State to provide diversity in the supply of telecommunications services, and it has found that competition will “promote efficiency, reduce regulatory delay, and foster productivity and innovation” and “produce a wider selection of services at competitive market-based prices.”⁴ The FCC’s decisions regarding separations will affect New Jersey’s competitive landscape and New Jersey’s consumers.

Rate Counsel participated extensively in the Commission’s previous “separations” proceeding, and Rate Counsel examined in-depth the impact of the flawed separations process on consumers and telecommunications markets.⁵ Another three years have gone by – although for practical reasons, Rate Counsel acknowledges the necessity of extending the freeze yet again, Rate Counsel urges the Commission to analyze and address long-standing separations issues before the next proposed freeze expires on June 30, 2010.

The present mis-match between the allocation of costs and the allocation of revenues harms consumers and distorts investment in the market. Among the evidence of flaws in the present separations system that Rate Counsel and the National Association of State Utility Consumer Advocates analyzed extensively, and which continue to be germane, include the “free ride” that digital subscriber line service receives over the basic

³ / Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (“1996 Act”). The 1996 Act amended the Communications Act of 1934. Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred to as “the 1996 Act,” or “the Act,” and all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code.

⁴ / *N.J.S.A.* 48:2-21.16(a)(4) and 48:2-21.16(b)(1) and (3).

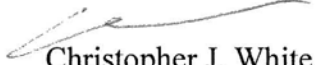
⁵ / CC Docket No. 80-286, Comments of the National Association of State Utility Consumer Advocates, the New Jersey Division of Rate Counsel and the Maine Office of the Public Advocate; and Affidavits of Susan Baldwin and Robert Loube, August 22, 2006; Reply Comments of the National Association of State Utility Consumer Advocates, the New Jersey Division of Rate Counsel and the Maine Office of the Public Advocate, November 20, 2006.

loop (which serves to raise the apparent cost of the basic loop) and the disproportionate growth in interstate private line service that is not adequately captured under the present freeze (and which serves to raise intrastate costs).⁶ Rate Counsel is also concerned that regulators' ability to obtain relevant data has been hampered severely by the Commission's granting of forbearance (petitions which Rate Counsel opposed),⁷ and therefore, Rate Counsel urges the Commission to re-consider the value of the data that was traditionally available through the FCC's Automated Reporting Information System. Information asymmetry – where regulated entities uniquely possess relevant cost and revenue data – hampers regulators' ability to ensure that consumers' rates are just and reasonable and to ensure that competition is evolving in an economically efficient manner.

Respectfully submitted,

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⁶ / *Id.* The flawed separations system directly affects consumer advocates' participation in state proceedings. Among other things, when regulators investigate intrastate switched access rates, incumbent local exchange carriers typically raise concerns about "revenue recovery." An improved separations system would yield more accurate data about the cost of basic local exchange service.

⁷ / The FCC web site states: "ARMIS filing requirements were reduced significantly for 2008 data by Commission forbearance orders. More information on the impact of the forbearance orders is available on the Significant Changes to ARMIS Reporting Instructions page.
<http://fjallfoss.fcc.gov/eafs7/MainMenu.cfm>"